



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01201/2019 [P]

THE IMMIGRATION ACTS

On the papers, pursuant to Covid -19
UTIAC directions
On 18 May 2020

Decision & Reasons Promulgated
On 27 May 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HAMID HUSSAIN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Bart-Stewart ('the Judge') promulgated on the 26 September 2019 in which the Judge dismissed the appellants appeal against the refusal of the respondent to issue a residence card, confirming a right of residence in the UK pursuant to European Community law as the extended family member of an EEA national exercising treaty rights in the UK.
2. Following the closure of Field House and adjournment of UTIAC hearings outside London a direction was sent to the parties on 20 March 2020 indicating a preliminary view that the error of law hearing was suitable for determination remotely and providing an opportunity for the parties to respond. A response was

received but not in the terms anticipated by the directions. Accordingly further directions were issued and sent the parties on 12 May 2020 a copy of which is set out at Annex A. On 14 May 2020, the respondents representative emailed UTIAC advising that the Secretary of State did not wish to file any further submissions.

3. In relation to the mode of determination, it is for a court of tribunal to determine the method by which a case is to be decided. Traditionally this has been by face to face hearings but there is no right to such an arrangements enshrined in law. What is a protected concept is that of the interests of justice and fairness in the manner in which a case is decided. Some cases will require oral evidence or involve vulnerable parties which may be unsuitable for remote hearings, as demonstrated by recent decisions in the Family Courts. Error of law hearings do not involve the giving of oral evidence. Legal representative will appear when permitted or able and make submissions. The ability for them to continue to do so was clearly enshrine in the initial directions sent in this case. Such submissions have been made and it is not made out there is a need for a remote hearing to enable the parties to say what they have already communicated in writing.
4. Considering all relevant facts, including the overriding objective, I find this appeal is suitable for the question of whether the Judge made an error of law and, if so, whether it is material to the decision to dismiss the appeal to be determined on the papers.

Background

5. The appellant is a national of Pakistan born on 8 March 1984. He entered the United Kingdom lawfully on 17 January 2010 as a student. The appellant applied on 19 May 2015 and 31 August 2018 for a residence card which was refused as the decision-maker was not satisfied the appellant had provided evidence he was dependent on the EEA national sponsor while the appellant lived in Pakistan. A further application of 12 December 2018 was refused in the impugned decision challenged before the Judge.
6. The decision maker accepted the appellant is a relative of an EEA national but refused the application on the basis it is said the appellant had not provided adequate evidence that he was dependent upon and/or residing with the EEA national sponsor prior to entering the United Kingdom and since entering the United Kingdom he had continued to be dependent upon and/or residing with his sponsor.
7. Having considered the evidence, including having the benefit of hearing and seeing the appellant and his EEA national sponsor Mr Amjad Zia Hussain give oral evidence and be cross-examined, the Judge sets out findings of fact from [33] of the decision under challenge.
8. At [34] the Judge writes:
 - “34. The appellant appears to put his case as prior dependency and/or prior membership of a household and present dependency and/or membership of a household. The skeleton argument submits the appellant’s case is most likely to fall under prior dependency and present membership of the sponsors household.”

9. The Judge notes the existence of an earlier decision the First-Tier Tribunal, Judge Parkes, who considered that the case in principle was the situation before the appellant arrived in the United Kingdom. It was found the appellant was living in Pakistan and was in an extended household that the sponsor visited from time to time. It was not suggested the sponsor lived there as such as he had left Pakistan to live in Holland in 1990. The appellant had to show he was dependent on the sponsor when he lived in Pakistan, which Judge Parkes did not find he had done.
10. The Judge Parkes noted that even if the sponsor was sending money to Pakistan to support the large extended family living together in the same house evidence will be needed to show that the sums being sent were essential for the support of the individuals concerned. Nothing had been said about the circumstances of the other uncle and whether he was working and the overall financial situation of the household [40]. The Judge notes that there is an affidavit from the uncle in Pakistan and the appellant's grandmother, dated 3 August 2015, but also notes the EEA national sponsor had not resided in Pakistan since 1995 and the appellant since 2010.
11. The Judge notes the evidence from the uncle in Pakistan claiming never to have worked and to essentially oversee the entire household. The Judge notes the appellant has three adult siblings and that his uncle has his mother and five adults sisters with no supporting evidence all those persons are living in one household and what their essential living needs might be.
12. At [43] the Judge finds there was no supporting evidence that the uncle in Pakistan was unable to work and had never done so and that it remained a position that there was no documentary evidence that the appellant was financially supported by the sponsor whilst he was in Pakistan.
13. At [44] the Judge also finds the appellant did not address an issue raised in the refusal letter with regard to his named sponsor in his entry clearance application and why he did not give details of the EEA national sponsor, which was found to be particularly relevant as by that date EEA national was living in the UK and the appellant claims that he joined his EEA national sponsor in the UK on arrival in 2010.
14. At [45] the Judge records finding the appellant's evidence regarding his circumstances in the United Kingdom inconsistent claiming the appellant was unable in his evidence to adequately explain statements for a NatWest account and in failing to give adequate explanation for payments that he appears to have made to the EEA national sponsor. The Judge records the appellant had claimed never to have worked in the UK when there was evidence that he worked for Asda for a period of time. The Judge concludes in this paragraph it was not accepted the appellant had been financially dependent upon the EEA national sponsor in the United Kingdom.
15. From [46] the Judge considers the position in the alternative as if the appellant was relying upon a claim to be a member of the EEA national household in the sense of living under the same roof of a household that could be said to be that of the EEA national from the time when the EEA national had such nationality. At [47] the Judge writes:

“47. He gives his first address as 112 Prince Street Walsall and later 84 Merton Way Walsall. There is a large quantity of official correspondence addressed to the appellant at both addresses. The title deeds produced all 38 Merton Way list the EEA national sponsor and his wife as the registered proprietors. There are also bank statements for the EEA national sponsor at 112 Prince Street. Taking these at face value it might be considered that the appellant has discharged the burden of proof that he lives at the same address as his uncle however as the appellant has failed to show any of the permutations set out in Dauhoo I find that the appellant has failed to satisfy the requirements under the 2016 Regulations.”

16. Permission to appeal was granted by a Designated Judge of the First-Tier Tribunal, the operative part of the grant being in the following terms:

“The grounds of appeal submit that the appellant easily addressed the points made by the previous Judge as he had now produced money transfers showing finances been sent to him directly but also via the uncle. The ground state it was unclear why the Judge said that the documents from the Habib Bank did not take matters further. The finding that nothing was said about the other uncle’s circumstances was untrue. Other criticisms of the Judge are made.

While the Judge set out the head note in Dauhoo and gave reasons for her decision permission to appeal is granted for reasons given in the grounds.”

Error of law

17. The chronology of events provided by the appellant reads:

Appellant arrived in the UK on a student visa	December 2009
Appellant granted further leave to remain	14 December 2013
Appellant applies for further leave to remain	13 December 2013
Appellant refused further leave to remain	9 June 2015
Appellant applies for Residence Card as EFM	19 May 2015
EFM application refused	28 October 2015
EFM appeal heard	12 January 2018
Decision of FTTJ Parkes dismissing the appeal	30 January 2018
Permission to appeal refused	16 May 2018
Appellant applies for Residence Card as EFM	31 August 2018
EFM application refused	26 October 2018
Appellant applies for Residence Card as EFM	13 December 2018
EFM application refused	22 February 2018
EFM appeal filed	8 March 2019

18. The EFM applications were as an extended family member of the maternal uncle living in the United Kingdom.

19. It is not disputed the issue in the appeal was whether the appellant could demonstrate dependency in any of the four ways illustrated by the head note in Dauhoo (EEA Regulations -reg 8(2)) Mauritius [2012] UKUT 79(IAC) which reads:

“Under the scheme set out in reg 8 (2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an “extended family member” in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:

- i. prior dependency and present dependency
- ii. prior membership of a household and present membership of a household
- iii. prior dependency and present membership of a household;
- iv. prior membership of a household and present dependency.

It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency- dependency or household membership-household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv).”

20. It is not disputed the appellant had a previous appeal nor that the Judge was able to consider that appeal and the findings made therein when assessing the merits of the current appeal. Judge Parkes specifically records that only three money transfers for 2008 and 2009 was the only financial evidence before him with no evidence to externally support the claim that the EEA national sponsor in the United Kingdom sent the money to his older brother in Pakistan. Judge Parkes also noted there was no evidence as to whether the money was for families essential needs and what the family’s financial circumstances were in Pakistan at the time. The appellant asserts in the current appeal the evidence provided was geared towards the omissions and gaps in the evidence previously provided.
21. The appellant asserts the evidence addressed the points made by Judge Parkes as he had now produced money transfers showing finances being sent to him directly but also via the uncle in Pakistan, the older brother of the sponsor, as is culturally acceptable where an older male member of the family is present. The appellant also claims he provided his uncle in Pakistan contemporaneous diary which kept a detailed log of the support sent by the sponsor of the families essential needs which externally confirmed the prior dependency. In relation to the evidence present, dependency or membership of the EEA nationals household, the appellant states evidence was provided to show he was living with the sponsor in the United Kingdom under the sponsors roof and to answer the question of present dependency and whether he was a member of the sponsors household.
22. The appellant does not challenge the Judge’s finding at [34] that the appellant was likely to fall within a category of prior dependency and present membership of a household, but asserts the findings at [35 - 37] are largely irrelevant as they discuss the family registration certificate showing a family tree when it was never suggested that the sponsor lived with the appellant in Pakistan and the prior dependency in Pakistan with the issue not membership of the same household.

23. The appellant challenges the Judge's finding that the three money transfers that were before Judge Parkes were of relatively small amounts, referring to the exchange rate between the Pakistani rupee and British pound when the transfers were made some 9 to 10 years ago. In relation to the Habib Bank transfers it is alleged the Judge erred in law when finding they were legible but did not take matters further by failing to note the sum of money transferred, dates when the transfers were made, recipients, and nor given adequate reasons for why this evidence did not take matters further.
24. The grounds refer to the fact that in his Evidence in Chief the appellant was asked by his own barrister about the circumstances of the uncle in Pakistan and the overall financial position of the household prior to the appellant's departure in which the appellant confirmed the family received 500,000 Pakistani rupees from the sponsor and that the uncle in Pakistan was not working, that there was no other source of support, and further testified that 100,000 Pakistani rupees had been transferred just prior to his travel to the United Kingdom for him specifically over and above the other support provided to the family. It is asserted the Judge fails to refer to or consider this material. It is argued evidence as to how the money was divided was set out in the diary of the uncle in Pakistan, which covers 2006 to 2008 at least, which it is asserted the Judge failed to give adequate consideration to.
25. The grounds assert the Judge failed to consider essential submission made by the appellant's barrister in respect of prior dependency and relying upon the decision of the Court of Appeal in *KG (Sri Lanka)* [2008] EWCA Civ 13 at [79] concerning the relevant time which prior dependency needs to be established. The grounds assert the appellant produced evidence of extensive money transfers close to the time of entry the United Kingdom which is all he needed to show in terms of proving the issue of prior dependency in Pakistan. The grounds also refer to the fact that the sponsor paid the appellant's fees for studying the University of Wolverhampton which was argued before the Judge pointed to independent evidence of prior dependency.
26. The grounds assert the Judge erred in considering the question are present dependency when it was clearly stated that the position in the United Kingdom was based upon membership of the EEA nationals household not the dependency issue. This issue was only considered at [47].
27. In relation to this issue, although the grounds of appeal at [35] assert the Judge must have found the second limb of *Dauhoo* (iii) met and that the appeal failed because of the issue prior dependency alone, this is not at all clear from a reading of the determination.
28. The Secretary of State in her response to the earlier directions of the Vice President UTIAC, filed on 3 April 2020, disagrees with the assertion in the grounds of appeal that the Judge did not decipher or understand the amount of the three money transfers when the Judge noted that the amounts were for £300 in 2008, and two of £400 in 2009 which is said to be nowhere near the 500,000PKR the appellant claimed to have received every year. It is asserted the Habib Bank credit notes were addressed to the sponsor's brother in Pakistan not the appellant and that the

findings were made before the open to the Judge on the evidence in relation to these documents.

29. The criticism of the appellant in not providing evidence covering the period he resided in Pakistan with or without his uncle at [8]
30. In his written submissions dated the 16 April 2020 Mr Biggs asserts the Judge failed to properly consider the oral evidence. It is not disputed further evidence of that nature was given by the appellant. There is no contemporaneous note from Mr Saini who represented the appellant at the hearing. A recent post grant witness statement from the appellants solicitor, reads:

'I, Urvi Shah of Vision Solicitors, in my capacity as the solicitor handling Mr Hamid Hussain's matter make this statement in support of the written submissions made in the above mentioned appeal and state as under:

1. Mr Hamid Hussain is a client of Vision Solicitors who represents him in his immigration matters. I am the Solicitor who has dealt with and continue to deal with the matter of Mr Hussain.
2. This appeal was heard at IAC Birmingham on 30 August 2019. As a part of representation of Mr Hussain's appeal I was present during the hearing proceedings. Counsel Mr Parminder Saini of 12 Old Square was instructed to argue the appeal for the appellant and the respondent was represented by presenting officer Ms S. Tasnim. The appeal was heard before the First Tier Tribunal Judge Ms Bart-Stewart.
3. I make this statement to support the written submissions made in this appeal. I state that the FTTJ has failed to consider the oral evidence given by the appellant and his sponsor at the time of the appeal hearing.
4. In respect of paragraph 38 of the decision dated 26 September 2019. The FTTJ states at paragraph 38 of the decision that "There are now 4 credit advice from Habib Bank. They are legible and do not take matters further."
5. I state that during the course of the hearing, the counsel Mr Saini requested the FTTJ Ms Bart-Stewart and the presenting officer Ms S Tasnim to peruse the original receipts as the copies of the same as submitted in the Appellant's bundle at pages 62-65 might not have been legible. The Judge however said that the copies were legible in her bundle. In any event the original receipts were produced to the Judge and the presenting officer for their perusal.
6. During the cross examination, the presenting officer Ms S Tasnim asked the appellant why more receipts were not submitting to which the appellant replied that as these transactions took place few years back and once the money was received by his uncle, his uncle did not see it fit to collect and save all the receipts of money transfer.
7. In respect of paragraph 23 of the grounds of an application for permission to appeal as prepared by the counsel Mr Saini, I state that

the FTTJ has failed to consider the oral evidence given by the appellant and his sponsor in respect of appellant's uncle Mr Kazmi who lives in Pakistan. The appellant in his oral evidence confirmed that the family received 500,000 Pakistani Rupees from the sponsor and that there was no source of income for the family living in Pakistan other than the money sent by the sponsor. He also confirmed that his sponsor specifically send money for him to travel to the UK for his studies.

8. It is stated that the FTTJ has failed to consider the oral evidence given by the appellant and his sponsor at the time of the appeal hearing which collaborated the supporting documents submitted in the appellant's bundle.

I hereby confirm that the above statement is true to the best of my knowledge and belief.

Name: Ms. Urvi Shah (for and on behalf of Vision Solicitors)'

31. The Judge noted the oral evidence given and was not required to set out verbatim each and every answer given by the appellant or other in their oral evidence. The Judge refers to the oral evidence from [14] which was clearly taken into account together with the documentary evidence. The issue is the weight given to that evidence along with all the other available material.
32. The Judge was aware of the issues raised in the refusal and the appellant's submissions in response. The respondent rejected the residence card for the following reasons:

'You claim that you were dependent and/or living with your sponsor prior to your arrival in the UK but have not provided adequate evidence to confirm this.

As stated within your representatives covering letter your sponsor paid £300 to the University of Wolverhampton in 2009 before you came to the UK. Upon review of the evidence provided it is clear that your sponsor paid a total of £4600 after you received correspondence from the University of Wolverhampton dated 06/07/2010 stating that you had not paid your tuition fees. Your sponsor paid the sums on the 07/08/2010 in two transactions at 11:20 4 PM & 11:30 5 PM when you were present in the UK. Therefore these transactions do not show proof of your dependency upon your sponsor before entering the UK.

Furthermore you entered the United Kingdom on a student Visa on 17 January 2010. You have listed your sponsor with this application as Mr Riaz Ahmed, which is inconsistent with your submission that your uncle was financially supporting you during this period as he was not your sponsor for your student Visa.

You have also provided MNA money transfers dated 2008 & 2009 showing yourself listed as the beneficiary. However it is unclear that the payments were collected or deposited to your bank account. Furthermore these two

money transfers are not continuous and do not cover the period that you were residing in Pakistan with or without your sponsor.

You have also provided money receipts from HABIB Bank ltd addressed to your eldest uncle who is your sponsor's brother. No birth certificates have been provided for Shah Hussain Kazim to prove this relationship. Only the birth certificates for yourself, your mother and your sponsor have been provided.

The diary received from your uncle with translations is also unable to be verified as this is not an official document.

No evidence has been provided which confirms that you resided with your sponsor in Pakistan prior to entering the UK. Your sponsor left Pakistan in 1990 and moved to Holland. Your sponsor entered the UK in 2007. No evidence has been provided that you resided with your sponsor in Holland during this period. You then entered the UK in 2010 which was neither with or shortly after your sponsor had entered.

You have provided two Pakistan identity cards for yourself and for your sponsor to evidence that you both resided together in the same household. Upon review of the identity cards it is noted that they both contain the same address in Pakistan however the identity cards were issued in 2015 and the other in 2016 when both you and your sponsor were residing in the UK and therefore this cannot be accepted to show proof of residence prior to entering the UK. Residential certificates have also been provided however this is also dated 2016 and only confirms that you lived in Pakistan at some point.

As you have failed to effectively evidence your dependency no further consideration has been given to the other requirements which needed to be satisfied under the Regulations including whether your EEA national sponsor is exercising Treaty rights as a qualified person.

If you are able to supply evidence that proves you were dependent upon and/or residing with your sponsor prior to entering the United Kingdom and that since you entered the United Kingdom you have continued to be dependent upon and, or residing with them, you may submit a further application.'

33. The appellant's reply set out by Mr Saini in a document headed "Supplementary Grounds of Appeal" dated the 25 June 2019 at [reads:
 - i. The sponsor's payment of the initial £300 towards the Appellant's University education demonstrates prior dependency and that there was no one else for the Appellant to turn to for support in order to complete his education. The fact of the balance being paid after the Appellant came to the UK does not contradict prior dependency but simply adds to the fact that the Appellants dependency continued after he left Pakistan and shows a consistent history of dependency.

- ii. The Appellant's sponsor by his student Visa may have been a third party, but financial support was provided by the Sponsor which is all that it is required to demonstrate prior dependency.
 - iii. The MNA money transfers dated 2008 & 2009 show the Appellant is the beneficiary and as such it does not matter whether the payments were collected or deposited to your bank account. Financial support is financial support.
 - iv. The Appellant will provide further money transfers other than those already mentioned.
 - v. The Appellant will provide birth certificate for Shah Hussain Kazmi to prove the relationship between the relevance of the Money Received from Habib Bank Ltd which is addressed to the Uncle (the sponsor's brother) [which would logically also have the same effect for money transfers sent in that uncle's name].
 - vi. The Uncle's diary has not been challenged by the Respondent as being fabricated and is a reliable form of external evidence corroborating financial support as the FTTJ complained it did not formally have.
 - vii. The Appellant will provide evidence to confirm he lived with the sponsor in Pakistan before 1990.
 - viii. The Appellant highlights that the two Pakistan identity cards for him and his sponsor shows they resided in the same household.
 - ix. The card should not be doubted due to their being issued in 2015 and 2016 as they show the historical data held by the authorities and confirm the address for both holders when they formerly lived in Pakistan. These confirm prior membership of the same household.
 - x. Again, the Residential certificates provided may be issued in 2016 however they also confirm the historical data held by the authorities and confirm the address for both holders when they formerly lived in Pakistan.
34. The Judge's assertion at [38] that the three money transfers naming the appellant as the beneficiary did not take matters further has not been shown to be a perverse or irrational finding as asserted in the appellant's further submissions. The Judge was aware these were documents that had been previously provided but finds they are of small amounts. The burden was upon the appellant to prove the element of dependency and the assertion in the appellant's pleadings that the Judge should have considered the sums may have been significant in Pakistan, even if not in the United Kingdom, does not establish arguable legal error if insufficient evidence was adduced to support such a claim. There was a large extended family in Pakistan according to the evidence with very little being provided to prove that the whole family unit were dependent upon and could be supported by such transfers.
35. Whilst the appellant did not rely on the three transfers to establish all the money he received from his sponsor, claiming in his oral evidence he did not have much

documentary evidence of historic support, all that evidence was considered by the Judge who was not satisfied that this in itself warranted a finding other than that made.

36. The further pleadings seek to raise an issue not raised before the Judge, that in fact the payment of £300 was £3000 for the reasons set out in the footnote at page 3 of Mr Biggs submissions of 16 April 2020. It is not made out this is not a new issue or one that falls within the scope of the grounds of appeal identified, or reasons on which permission to appeal was sought or granted, or that it is appropriate in all the circumstances to grant permission to amend the grounds to raise this point. It is of note that it was not claimed before the Judge that the payment was as is now asserted.
37. It is not made out the Judge did not consider the evidence provided from the uncle in Pakistan or the appellant's grandmother and this evidence was not rejected solely on the basis of the claim it was self-serving as the Judge specifically notes at [40]. The grandmother declared that she is the owner of the property the family are living in in Pakistan and that the appellant was residing at the same address. The Judge notes the affidavit is dated 3 August 2015 and that the EEA national sponsor had not resided in Pakistan since 1995 and the appellant since 2010. Such a statement cannot therefore be true.
38. Of importance at [41] is the finding of the Judge that although it was claimed the uncle in Pakistan had never worked and essentially oversees the entire household, that the appellant has three adult siblings, the uncle has his mother and five adult siblings with there being no supporting evidence to show the people all lived in one household and what their essential living needs might be. The Judge specifically considers the diary at [42]. The Judge's findings in relation to the weight attributed to these documents is supported by adequate reasoning. It is important to read the decision as a whole to understand the Judge's concerns.
39. The Judge was aware that the appellant's case was that the elder uncle in Pakistan was the conduit through which the sponsor's support was provided which it is claimed was supported by the oral evidence and the uncle's declaration. Even if this was the case the Judge was clearly not satisfied that the required tests to establish dependency by an extended family member upon the EEA national had been made out. The Judge was not satisfied that the evidence established that the appellant was as claimed.
40. The Judge's concerns are also highlighted at [44] when noting that the appellant did not address the issue raised in the refusal letter regarding the naming of a person other than the EEA national sponsor as the sponsor for the student Visa. The Judge notes this is particularly relevant as by that date EEA national was living in the UK and that the appellant claimed he joined his EEA national sponsor on arrival in 2010. Prior to the Tier 4 PBS a nominated sponsor was required for a prospective student. Such a person would have had to satisfy an Entry Clearance Officer of their connection with the prospective student and own financial and other standings. The appellant was required to establish they could meet the course fees and maintenance requirements themselves or with the assistance of the nominated sponsor. It is not claimed the appellant's student Visa was obtained fraudulently or that he was not a genuine student indicating the person he

nominated as the individual with whom he has a financial or other connection, which was not the EEA national sponsor, must have been accepted as genuine.

41. The Judge also notes inconsistencies at [45] and failure of the appellant in his evidence to provide an explanation for payments he appears to have made to the EEA national sponsor. The Judge also notes the appellant claimed in his oral evidence never to have worked in the United Kingdom when there was clear evidence that he had worked for the supermarket Asda for a period of time.
42. It is clear the appellant disagrees with the Judge's findings, but the assertion of perversity is not made out. The appellant is, in effect, suggesting a different conclusion/outcome that should have arisen on the evidence other than the one that the Judge felt able to make, attributing the weight it was considered the evidence deserved having taken the whole into account, in the round. It is not made out the weight the Judge attribute is in any way irrational or perverse. Whilst the appellant disagrees with the outcome it is not made out findings are outside the range of those reasonably open to the Judge on the evidence.

Decision

43. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

44. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 18 May 2020

ANNEX A

DIRECTIONS (T)

1. On 26 September 2019 First-Tier Tribunal Judge Bart-Stewart dismissed the appellant’s appeal. Permission to appeal was granted by Designated Judge of the First-tier Tribunal on 28 February 2020.
2. On 20 March 2020, the parties were sent a copy of directions dated 18 March 2020 issued by the Vice President of the Upper Tribunal. This provided for the above appellant, the party who sought permission to appeal, to submit further submissions in support of the assertion of an error of law and on the question of whether the decision should be set aside if an error is found no later than 2 April 2020. Further directions provided the respondent with a right to serve submissions in response no later than 9 April 2020 with the appellant having a right of reply no later than 16 April 2020.
3. What is clearly anticipated by such directions was that there will be a sequential opportunity for the parties to comment upon each other’s further observations. Despite that the first document to be received was that of 3 April 2020 from the Secretary of State. The first communication from the appellant was not received until 9 April 2020 which, rather than dealing with the specific terms of the Vice Presidents direction, applied for an adjournment claiming the hearing should be stayed for a face-to-face hearing after the Covid 19 emergency had subsided relying upon the letter from ILPA dated 2 April 2020 which was annexed. What the appellant did not do was provide, in addition to the ILPA letter, a copy of the reply by the President of the Upper Tribunal indicating no arguable merit in the submissions made by ILPA.
4. There then followed further written submissions received on 16 April 2020 from the appellant described as being submissions in reply. Whilst these seek to respond to those provided by the Secretary of State’s representative they are the first detailed submissions made as to the making of an error of law and the failure to provide the same in the first submissions deprived the Secretary of State with the opportunity to respond to the same. This is procedurally unfair.
5. It is therefore directed that:
 - i. The Secretary of State shall, if so minded, have a right to file and serve additional submissions in response to those filed by the appellant on 16 April 2020 no later than 22 May 2020.
 - ii. The appellant shall, if so advised, have the right to file and serve a further reply no later than 29 May 2020.
 - iii. The matter shall be further considered by Upper Tribunal Judge Hanson on the papers on the first available date thereafter.

Signed.....
Upper Tribunal Judge Hanson

Dated the 1 May 2020